IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4497 of 1999

with

FIRST APPEALS Nos. 7289 to 7297 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

ALOK COOPERATIVE HOUSING SOCIETY LIMITED

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

MR AB MUNSHI for Petitioner
MR MUKESH PATEL AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE M.R.CALLA
and

MR.JUSTICE D.H.WAGHELA

Date of decision: 04/05/2001

C.A.V. JUDGEMENT

(Per : MR.JUSTICE D.H.WAGHELA)

1. These Cross First Appeals No.4497 of 1999 by the original claimants and No.7289 of 1999 by the Land Acquisition Officer and the Executive Engineer arise from the common judgment and order dated 23.4.1999 passed by the learned 3rd Extra Assistant Judge and Special Judge, Ahmedabad (Rural) in Land Acquisition Case No.22 of 1993 (main) and cognate Land Acquisition Cases Nos.14 to 21 of 1993. The other First Appeals Nos.7290 to 7297 of 1999 also arise from the same group of land acquisition cases disposed by the aforesaid common judgment, but the appeals are by the acquiring authorities only and in respect of the agricultural land contiguous to the non-agricultural lands involved in the first mentioned appeals. For the sake of convenience, the original claimants shall hereinafter be described as "claimants" and the acquiring bodies as the "Land Acquisition Officer (LAO)". By consent, the appeals were heard together and are decided by this common judgment.

2. The broad undisputed relevant facts of these appeals are that lands bearing Block Nos.155 (Part), 160 (Part) and 198 (Part) admeasuring 39,783 sq. mtrs. situated in the sim of village Adalaj, taluka and district Gandhinagar, were acquired for the purpose of construction of Narmada Project Main Canal. The notification under Sec.4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") was issued on 21.11.1987 and the notification under Sec.6 of the Act was issued on 5.5.1988. Along with these non-agricultural lands, some other agricultural lands were also acquired by the same notification for the same public purpose. The claimant in these appeals is a co-operative society which demanded and claimed compensation @ Rs.250/- per sq. mtr. against which the LAO awarded compensation @ Rs.5/- per sq. mtr. for the agricultural lands and @ Rs.25/- to Rs.30/- per sq. mtr. for the non-agricultural lands together with proportionate cost of trees, plantations and solatium and running interest as per the provisions of the Act. Upon the claimants seeking a reference under Sec.18 of the Act, the claims came to be adjudicated by the Reference Court and by the impugned common judgment and award allowing the reference, additional compensation Rs.80/per sq. mtr. for the agricultural lands and

Rs.165/per sq. mtr. for the non-agricultural lands was awarded together with proportionate costs and solatium and running interest as per the provisions of the Act.

3. As far as the non-agricultural lands were concerned, the claimants contended that the total award of compensation @ Rs.190/- to Rs.195/- per sq. mtr. was on the lower side considering the non-agricultural use, development and potential of the acquired land. It was submitted that these lands were already divided into plots and allotted as such to members who had started putting up construction of residential houses, the lands were abutting with large frontage on the Sarkhej-Gandhinagar Highway with Khodiyar junction and village Adalaj in the vicinity. Thus, the lands under acquisition were contended to be surrounded by developments on all sides besides having ready facilities for residents within the lands. It was also submitted that the instances of contemporary sale proved before the Court were not properly appreciated and on this basis the original claim of compensation @ Rs.250/- per sq. mtr. was sought to be justified.

4. In the cross appeals filed by the LAO in respect of the same lands, it was contended that the Land Acquisition Officer had awarded compensation at the appropriate rates after considering the location, prevailing market rates, type of land and the other relevant factors and the same ought not to have been enhanced by the Reference Court. It was further submitted that the instances of sale of lands in the nearby areas in the last five years were considered by the LAO and the instances of sale of various small plots by the claimant-society itself ought not to have been relied upon.

5. Considering the cross appeals relating to the non-agricultural lands under acquisition, it appears that the Hony. Chairman of the claimant-society, who was examined at Exh.21, deposed that so many bungalows were also constructed in the area and a member of the committee of the society deposed at Exh.25 to prove the allotment of plots to the members. Several other members were examined to prove that they were allotted plots in the land in question for particular amounts. One Dasrathbhai A. Patel examined at Exh.204 deposed that he had purchased Plot No.A.28 from an original member of the society and paid Rs.39,465/- for the plot admeasuring 348 sq. mtrs. according to the sale deed executed on 29.12.1986. As against such evidence, the Executive Engineer, in charge of construction and acquisition

examined at Exh.270, and the Special Land Acquisition Officer examined at Exh.274, have deposed that the compensation awarded by the LAO was just and proper.

5.1 The claimants relied upon a number of documents including the judgment in Land Acquisition Cases Nos.343 of 1989 and 309 of 1989, copies of village form No.7/12, abstracts of payments made by the members of the society, valuation statements, share certificates etc. It was found from the documentary evidence produced on record that the highest value that the plots fetched at the relevant time came to Rs.175/- per sq. mtr. and taking a view favourable to the claimants the market value at the relevant time came to Rs.196/- per sq. mtr. and the LAO having already fixed Rs.25/- per sq. mtr., the claimants were held to be entitled to compensation Rs.171/- per sq. mtr. The instances of post notification sales @ Rs.232/- and Rs.256/- per sq. mtr. on the basis of Exhs.60 and 61 were pressed into service by the claimants to justify compensation @ Rs.200/- per sq. mtr. and the same were also considered by the Court.

6. It was submitted on behalf of the LAO that the documents by which the society had originally purchased the land were not produced and instead, the claimants relied upon the inflated figures shown in the recent sale instances of very small plots which could not have been taken as the basis in respect of large areas that were acquired. It was further submitted that the so-called sale instances of small plots in the so-called developed society of residential plots were in reality the allotment letters and did not specify the exact price of land per sq. mtr. at which the plots were sold. It was also contended that the actual purchaser and seller of the plots in question were not examined before the Court. Therefore, in short, the evidence of market value of the lands in question was not reliable and consequently the sharp increase in compensation as awarded by the impugned judgment could not be sustained according to the submission.

7. During the hearing of these appeals, it was fairly conceded on behalf of the claimant that the market price of the lands in question was worked out from the letters of allotment on the basis of the amounts shown to have been paid by dividing the same by the area in sq. mtrs. of the plot concerned; and the plots in the society were offered to the members along with a number of common amenities within the society. A brochure enumerating the common amenities provided by the society

to the plot-holders promised library, club-house, skating rink, hobby centre, swimming pool, badminton and tennis courts, gardens, open-air theatre etc. as well as roads connecting the plots. It is obvious in the facts of these cases that lands are acquired en-bloc and the compensation is awarded for the entire pieces of land disregarding the plots, sub-plots and the roads laid within the area. It is also clear that the acquired plots could not have fetched the same market price if the common amenities set up by the claimant society were not to be availed. In this view of the matter, the claimants have not made out any case for a further increase in the rate of compensation and have not relied upon any applicable judgment in support of their submission. However, the learned Assistant Government Pleader appearing for the LAO cited a number of judgments in support of the submissions that instances of sale of small plots of land could not form the sole basis for determining compensation for a large area under acquisition. In this context, it may be appropriate to quote as under the observations of Their Lordships of the Supreme Court in a Full Bench judgment in M/S. PRINTERS HOUSE PVT. LTD. v. MST. SAIYADAN etc. [AIR 1994 SC 1160]:

> "If 'Comparable Sales Method of Valuation of Land' is adopted for determining the market value of an acquired plot of land, it generally holds good for determination of the market value of several acquired plots of land if acquisition of all such plots of land is made pursuant to the same preliminary notification. But, if any of the factors, such as, location, shape, size, potentiality or tenure of one plot of acquired land widely differs from the other plot(s) of acquired land(s), then the market value of each plot of land acquired has to be determined independently of the other(s) even if all of them had been acquired pursuant to the same preliminary notification. The reason is not far to seek since the differential factors relating to different acquired plots greatly affect their value. Hence, if any salient factor of different acquired plots of land, which greatly affects their value, is ignored or is not taken into consideration by the Court while determining the market value of acquired lands, it will have failed to apply the correct principle of valuation adoptable in valuation of different types of acquired lands."

In the facts of the present case, the location, potentiality and tenure of all the plots from the acquired lands are not shown to be widely differing. And the sale instance of individual plots was a relevant criterion in determining the market value of the acquired lands as the lands were sold in such plots only by the claimant.

7.1 The contentions regarding the lands in question having potential value and evidence of fast development were not seriously pressed. The contention based on the valuation register maintained by the municipality or the value assessed by the Government for the purpose of the Stamp Act has no substance in view of clear pronouncement by the Apex Court in LAND ACQUISITION OFFICER v. JASTI ROHINI & OTHERS [(1995) 1 SCC 717]. It would be trite to state that there was possibility of acquired land being used for putting up buildings in the immediate or near future and the contention that subsequently the permission for non-agricultural use was revoked was a subject-matter of litigation and stay cannot derogate from the fact that the claimants had the necessary permission for non-agricultural use at the time of acquisition.

7.2 Thus, after considering the material on record and examining the rival contentions, we find that the lands in question were sub-divided into plots and had the potential for construction of residential houses in proximity of an important highway and having rapid development all around the area. In these facts and circumstances, taking the previous sale instances in the same area into account and discarding the subsequent sale deeds, just and proper rate of compensation is fixed in the impugned judgment and order which does not require any interference in appeal. Accordingly, both the cross appeals in respect of the non-agricultural lands are liable to dismissed.

8. As for the agricultural land under acquisition, as seen earlier, the claimant has not filed any appeal but defending the award of compensation at the higher rates, it was submitted that the land being contiguous to the developed non-agricultural lands in respect of which compensation @ Rs.190/- to Rs.195/- per sq. mtr. were awarded, the impugned judgment was eminently just and the compensation was on the lower side. However, the learned Assistant Government Pleader vehemently submitted that the rates at which the compensation was awarded for the contiguous developed non-agricultural land were unduly high and, in any case, the relevant sale instances proved

by documentary evidence and lack of potential value could not justify any increase in compensation as awarded in the impugned judgment. The compensation awarded in respect of the agricultural land is supported by the judgments produced at Exhs.135 and 139 in respect of lands acquired in the same village. As the notification under Sec.4 in respect of the land acquired in one of those cases was published on 2.1.1986 and such notification in the present case was published on 2.1.1988, by increasing the price by 10% per year, the market value of the land in question had come to Rs.90/- per sq. mtr. Similarly, in another case, the Court had awarded Rs.50/- per sq. mtr. wherein the notification under Sec.4 was published on 21.12.1987 and applying the increase of 10% per annum the market value would have come to Rs.55/- per sq. mtr. Based on these two instances involving similar land and considering the proximity of this agricultural land to the adjoining non-agricultural land and the potentiality, additional compensation @ Rs.80/- per sq. mtr. is held to be legal and eminently justified. However, the impugned judgment and order has to be modified in so far as it seeks to disallow the deduction of 5% Government share from the compensation on account of the land being new tenure land, in view of the express provision of Sec. 11-A as amended by the Gujarat Amendment Act 20 of 1984. Therefore, subject to the modification that 5% Government Share on account of compulsory acquisition by the Government shall be deducted from the compensation awarded for the agricultural land, the impugned judgment and order is confirmed and all the appeals are dismissed with order to the parties to bear their own costs. Decree to be drawn accordingly.

Pronounced in the open court today on 4th May, 2001.

Sd/-

(M.R.Calla, J.)

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)